IN THE HIGH COURT OF JUDICATURE AT BOMBAY: NAGPUR
BENCH: NAGPUR
CRIMINAL APPLICATION NO. 2090 OF 2006

Suresh Wadguji Narad and 3 others
versus
State of Maharashtra

Mr. Halmare, Advocate for the applicant
Mr. Mirza, A. P. P. for state
CORAM: S. R. DONGAONKAR, J.
DATE: 28.9.2006

ORDER

Heard counsel for parties.

Rule made returnable forthwith. Heard finally with the consent of the parties.

2] By this application under section 482 of Criminal Procedure Code, applicants seek to challenge the order passed by the 10th Ad-hoc Additional Sessions Judge, Nagpur dated 23.3.2006 by which he rejected the application of the applicants for discharge under section 227 of the Criminal Procedure Code.

3] Applicants are facing trial for the offence punishable under section 498-A, 306, read with section 34 of Indian Penal Code, on the basis of report dated 18.5.2005 of one Pravin Bawankar, the brother of the deceased Vidya in crime no.378 of 2005 of Police Station, Sakkardara, Nagpur.

4] Learned counsel for the applicant has contended that the order of the lower court is incorrect. According to him the applicant no.

2 who is bedridden and applicant no.4 who is second wife of the applicant no.1, are not at all responsible for the alleged offence. According to him the copy of the suicidal note was not made available to the accused. Further according to him despite the fact that the applicant no.3 is bedridden, her application for grant of exemption from personal appearance was not considered by the learned Trial Judge and non bailable warrants were issued against him. The order of the lower court is totally incorrect and therefore to meet the ends of justice, same may be set aside.

5] Mr. Mirza, learned A. P.P. has opposed the prayer of the applicants.

6] On perusal of the impugned order of the lower court, it would be seen that the lower court has recorded his reason for coming to the conclusion that the applicants at this stage can not be discharged. Learned Trial Judge has also observed that he has gone through the suicidal note which is at pages 24 to 27 on record. He has observed that State has alleged that deceased Vidya had left behind suicide note and said note clearly shows the complicity of the accused. He has also observed that in addition to the aforesaid suicide note, there is statement of Sau. Kalavati the mother of the deceased Vidya to implicate the accused.

7] Learned counsel for the applicant has contended that the copy of the suicidal note has not bee provided to the applicants – accused. This submission can not be accepted vis-a-vis the observations of the learned Trial Judge. Even otherwise if the applicants have not received the copy of the suicidal note, they can

certainly apply to trial court for getting copy of the same.

8] As regards the submission of the learned counsel for the applicant that the applicant no.3 is a bedridden and the applicant no.4 is second wife of the present applicant no.1 – husband and they are not responsible for the offence, all these facts can be argued by the accused before trial court when the trial begins. Consideration of this depends on the facts and circumstances of the case and therefore, all these matters need to be decided by the trial court at the time of trial.

9] Learned counsel for applicants has already stated above that applicant no.3 is bedridden and she can not attend the trial and though these facts were brought to the notice of the learned Trial Judge, the learned Trial Judge rejected the same and issued non-bailable warrants. In these circumstances Trial Judge is directed to consider the application of applicant no.3 for grant of personal exemption at the time of trial after production of medical certificate before the trial Judge. In view of above, I do not think that the applicants have made out any case for setting aside the orders of the trial Judge refusing to discharge the applicants. Accordingly this application is rejected

JUDGE

smp